IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.867 OF 2005
IN
NOTICE OF MOTION NO.2980 OF 2005
IN
S.C.SUIT NO.3354 OF 2005

Shivsena through its President
and Shakha Pramukh & ors. Appellants
vs.
Sai Enclava CHS Limited & ors. Respondents

Mr.Bharat Choudhary with Mr.Viraj Maniar i/b.Mr.Viraj Maniar & Associates for the appellants.

Mr.H.S.S.Murthy for the respondent no.1.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

I have heard the learned counsel for the respective parties at length. By the impugned order dated 30.8.2005, notice of motion no.2980/2005 has been made absolute by the restraining order from performing any public function like Ganpati festival, Mahashivratri and Navaratri in the properties shown in the plaint-Exhibit D on page no.75 of the compilation till the disposal of the suit.

2. This appeal was moved and heard yesterday and it was adjourned for taking instructions from the plaintiff society's office bearers so as to find out an

alternative solution for this year only for the Ganpati festival keeping in mind that the Ganpati idol is installed in the open space (stilt area) and without any public functions. The office bearers of the society have been gracious enough to come forward and agree for an arrangement restricted to the Ganpati festival starting from tomorrow and by keeping in mind that the residents of the society are not put to any major inconvenience and they do not suffer nuisance of noise etc.

3. Without disturbing the impugned order, the following arrangement has been accepted by consent of both the parties for the ensuing Ganpati festival only:

(a) The area marked in red and blue and indicated in Exh. D by figures 3, 2 and 5 out of the parking lot of the plaintiff-society (out of stilt area of the society) shall be demarcated for the appellant and the appellant will put curtains etc. covering that area. At the place marked in figure 3, the Ganesh idol will be installed facing the east and the area marked in figures 2 and 5 shall be available for performing the pooja/aarati or for devotees to sit

during the period the pooja/aarati is performed.

(b) The area marked in figure 1 will be cleared off any material that the appellant or its activists may have placed.

(c) As far as possible the pooja and aarati will be performed during the notified/fixed hours and twice in a day.

(d) On one day, Satyanarayan Pooja will also be performed during the 10 day festival.

(e) At the end of the festival of 10 days, the area marked by figures 3, 2 and 5 will be cleared by the appellant under intimation to the Secretary of the plaintiff-society.

(f) Except while installing of the idol or while the idol arrives and when the immersion procession starts, there shall not be any band and/or loudspeakers playing in the premises of the plaintiff-society and there shall not be

any public function during the 10 day festival. Performance of pooja and aarati shall not be treated as a public function.

5. It is repeated that this is only an arrangement by consent for this Ganpati festival alone and it is without prejudice to the rights and contentions of both the parties which are subject matter of the pending Suit.

6. The appeal stands disposed of in the above terms.

7. Civil Application does not survive.

(B.H. MARLAPALLE,J.)